UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,304	12/11/2001	Yao Wang	EMC-01-201	7237

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EXAMINER
ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/017,304	WANG ET AL.
	Examiner	Art Unit	
	David E. England	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _11 December 2001_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-28_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-28_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1 – 28 are presented for examination.

Claim Objections

2.   Claims 3, 10 and 20 are objected to because of the following informalities: There are two

periods (.) in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United
> States before the invention thereof by the applicant for patent, or on an international application by another who
> has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention
> thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999

(AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA

35 U.S.C. 102(e)).

4.   Claims 1 – 16, 18 – 26 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by

Colby et al. U.S. Patent No. 6449647 (hereinafter Colby).

5.   Referencing claim 1, as closely interpreted by the Examiner, Colby teaches a method for

managing network resources for transfer of data stored in a data storage environment, the method

comprising the computer-executed steps of:

6.   requesting from a server for services on an internet network, a bandwidth for data transfer

from a first data storage system to a second data storage system over the internet network based

on the amount of data to be transferred, (e.g. col. 2, line 65 – col. 3, line 9);

7.   transferring data in response to a bandwidth allocation from the server based on the

request, (e.g. col. 9, lines 5 – 24);

8.   monitoring internet network traffic characteristics during the data transfer, (e.g. col. 9,

lines 5 – 24); and

9.   responsive to the monitored internet network traffic characteristics, selectively requesting

an effect on bandwidth allocation, (e.g. col. 9, lines 5 – 24).

10.   Referencing claim 2, as closely interpreted by the Examiner, Colby teaches the effect

requested is to increase bandwidth allocation, (e.g. col. 9, line 36 – col. 10, line 8).

11.   Referencing claim 3, as closely interpreted by the Examiner, Colby teaches the request is

in accordance with a Java-based protocol, (e.g. col. 5, lines 28 – 48).

12.   Referencing claim 4, as closely interpreted by the Examiner, Colby teaches the effect

requested is to increase bandwidth allocation is based on the data transfer not meeting at least

one performance criterion, (e.g. col. 9, line 36 – col. 10, line 8).

13.   Referencing claim 5, as closely interpreted by the Examiner, Colby teaches the at least

one performance criterion is based on a predetermined data transfer rate, (e.g. col. 9, line 36 –

col. 10, line 8).

14.   Referencing claim 6, as closely interpreted by the Examiner, Colby teaches the effect

requested is to increase bandwidth allocation is based on the data transfer lagging behind based

on the predetermined data transfer rate, (e.g. col. 9, lines 5 – 24 & TABLE 1).

15.   Referencing claim 7, as closely interpreted by the Examiner, Colby teaches the monitored

internet network traffic characteristics include information regarding packet latency and the data

transfer lagging behind is further based on packet latency, (e.g. col. 9, lines 5 – 35).

16.   Referencing claim 8, as closely interpreted by the Examiner, Colby teaches the monitored

internet network traffic characteristics include information regarding packet loss and the data

transfer lagging behind is further based on packet loss, (e.g. col. 9, lines 5 – 24 & TABLE 1).

17.   Referencing claim 9, as closely interpreted by the Examiner, Colby teaches the data

transfer is at least part of a data replication process, (e.g. col. 9, lines 5 – 24 & col. 10, lines 10 –

32).

18.   Referencing claim 16, as closely interpreted by the Examiner, Colby teaches the data

replication is carried out in accordance with a replication policy, (e.g. col. 5, lines 29 – 48).

19.   Claims 10 – 15, 18 – 26 and 28 are rejected for similar reasons stated above.

Claim Rejections - 35 USC § 103

20.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

21.   Claims 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby

as applied to claims 1, 9, 16, 18, 19 and 26 above, and in view of Lyon et al. (6028841)

(hereinafter Lyon).

22.   As per claim 17, as closely interpreted by the Examiner, Colby does not specifically teach

the replication policy defines replication groups including devices distributed between the first

and second data storage systems and the data replication process is completed when all devices

in the replication groups are synchronized. Lyon teaches the replication policy defines

replication groups including devices distributed between the first and second data storage

systems and the data replication process is completed when all devices in the replication groups

are synchronized, (e.g. col. 6, lines 7 – 15). It would have been obvious to one of ordinary skill

in the art at the time the invention was conceived to combine Lyon with Colby because

synchronizing all devices would guarantee that all control functions see identical stimuli.

23.   Claim 27 is rejected for similar reasons as stated above.

Conclusion

24.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

25.   a.   Saxon U.S. Patent No. 5758359 discloses Method and apparatus for performing

retroactive backups in a computer system.

26.   b.   Lyles et al. U.S. Patent No. 6563829 discloses Method for providing integrated

packet services over a shared-media network.

27.   c.   Kramer et al. U.S. Patent No. 6546014 discloses Method and system for dynamic

bandwidth allocation in an optical access network.

28.   d.   Fan et al. U.S. Patent No. 6408005 discloses Dynamic rate control scheduler for

ATM networks.

29.   e.   Chuah U.S. Patent No. 6469991 discloses Method for overload control in a

multiple access system for communication networks.

30.   f.   Koperda et al. U.S. Patent No. 6230203 discloses System and method for

providing statistics for flexible billing in a cable environment.

31.   g.   Dobbins et al. U.S. Patent No. 5790546 discloses Method of transmitting data

packets in a packet switched communications network.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to David E. England whose telephone number is 571-272-3912.

The examiner can normally be reached on Mon-Thur, 7:00-5:00.
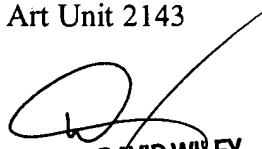
        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

        Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

                                                    David E. England
                                                    Examiner
                                                    Art Unit 2143

De

                                                    DAVID WILEY
                                                    SUPERVISORY PATENT EXAMINER
                                                    TECHNOLOGY CENTER 2100